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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1111

AUGUSTINE L. RANJEL, et al.,
Petitioners,

vs.

CITY OF LANSING, GERALD W. GRAVES,
Mayor of Lansing, and
THEO W. FULTON, Clerk, City of Lansing,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION

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CITATIONS TO OPINIONS BELOW

The Opinion of the District Court, filed January 8, 1969, is reported at 293 F. Supp. 301. The Opinion of the Court of Appeals for the Sixth Circuit, dated October 28, 1969, is reported at 417 F. 2d 321.

JURISDICTION

The Judgment of the Court of Appeals was entered on October 28, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Respondents respectfully invite the attention of this Court to their argument under Point I that the issues raised are not ripe for adjudication by this Court.

QUESTIONS PRESENTED

I.

In view of the rule of practice that the Court never anticipates a question of constitutional law in advance of the strict necessity of deciding it, and in view of the fact that these petitioners have benefited from the use of the zoning power which they now challenge, are the issues raised ripe for adjudication by this Court?

II.

Will the Supremacy Clause of the Constitution of the United States be violated if the referendum here in question were permitted to be held?

III.

Did the Court of Appeals apply the Fourteenth Amendment consistently with the decisions of this Court?

IV.

Was the Court of Appeals correct in holding that the District Court committed error in enjoining the conduction of the referendum where no civil unrest was threatened and where the ballot proposal was neutral?

STATEMENT OF THE CASE

The following is offered for the purpose of correcting certain of the inaccuracies and omissions in the Statement of the Case by petitioners.

Of Lansing's 133,000 residents, approximately 16,000 are black or Mexican-American, and 65% of this minority population live in Lansing's Model Cities Neighborhood or slum, which contains only 11% of the City's total population (Stip. ¶5)[1]. Thus, nearly 30% of the population living in the slum area is non-black and non-Mexican-American, and 35% of the black and Mexican-American population of Lansing live elsewhere in the City.

A high proportion of *all* of the residents of this slum area are poor: 32.4% have annual incomes below $3,000, and 23.9% have annual incomes between $3,000 and $5,000 (Stip. ¶6). Thus, 43.7% of all the residents there have annual incomes in excess of $5,000.

With the approval of the Lansing City Council, the Lansing Housing Commission applied to the United States Department of Housing and Urban Development (hereinafter referred to as HUD) for program reservations to build 1,000 units of low rent public housing (Stip. ¶13). HUD then issued a program reservation to Lansing for 1,000 units, a statement of determination by HUD to finance the construction of these housing units (Stip. ¶13). Acting through the Lansing Housing Commission, the City of Lansing and HUD advanced funds for selecting low rent housing sites and planning low rent housing projects. Only sites situated outside the slum area were selected (Stip. ¶14).

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[1] Citation references to "Stip." are to the parties' stipulation in the District Court.

One of the sites selected was located at Jolly and Cedar Streets, a twenty acre parcel in a white neighborhood in the southern part of the city (Stip. ¶15). The Lansing Housing Commission selected a private real estate developer to construct low rent housing on the Jolly-Cedar site. He agreed to construct 100 units of housing for low income families, and 150 units of housing for elderly persons with low incomes, and he obtained an option to purchase the site (Stip. ¶17, 18).

Jolly-Cedar is situated in an "A" single family residential district, requiring lot areas of not less than 5,000 square feet per family. Therefore, the private developer petitioned the Mayor and City Council of Lansing for a "spot" rezoning of the twenty acre site from "A" single family residential district to community unit plan (Stip. ¶18). Community unit plan affords relief from use of land, height, and area regulations upon approval of a planned residential development for single-family, two-family, or multitple dwellings on large tracts of land (Lansing Zoning Ordinance, §36-7). Both the City Planning Board and the City Council considered the plans submitted by the private developer and found them to be consistent with the intent and purpose of promoting public health, safety, morals and general welfare, and also found that the proposed development would have a minimum effect on abutting property (Stip. ¶19). Accordingly, the City of Lansing, acting through its Council in May, 1967, approved the community unit plan by ordinance, subject to certain conditions among which was that the density of the area developed for residential purposes not exceed 12 units per acre (Stip. ¶19). Under the approved plans, the density of the housing for low income families will be 8.05 families per acre. It is the housing for the elderly that raises the density for the entire development above the average density allowed in single-family residential districts (Stip. ¶20).

The Charter of the City of Lansing provides for the circulation of a referendary petition, and the holding of a referendum on *any* ordinance enacted by the City Council[2]. An organization known as the Committee for Individual Homes then circulated a petition seeking a referendum on the Council's action in rezoning the Jolly-Cedar site to community unit plan (Stip. ¶21).

With few exceptions, community unit plans in the past have provided for the development of middle and upper income housing, renting at prices beyond the means of residents of Lansing's ghetto. None of these community unit plans has been subject to referendum (Stip. ¶22). Thus, some community unit plans have provided for the development of low income housing, and have not been subject to referendum.

The Lansing City Clerk refused to accept the petition for referendum (Stip. ¶21). A mandamus action was filed in the Circuit Court for Ingham County, Michigan, seeking to compel the City Clerk to certify the petition as sufficient and proper and to present said petition to the City Council for its action (Brief in Support of Motion to Dismiss, p. 2). After a hearing the Ingham County Circuit Court ordered the City Clerk to certify the petition and to present it to the City Council for its action thereon (*Parr v. Fulton*, 9 Mich. App. 719, 721, 158 N.W. 2d 35, 37 (1968)). The City appealed this order to the Court of Appeals of Michigan which affirmed the lower court (*Parr v. Fulton, supra*). Under Chapter 6, Section 6.11 of the City Charter[3], the Council had the alternative of either re-

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[2] Chapter 6, Section 6.9 which is set forth in the Petition for a Writ of Certiorari, 40a.

[3] Chapter 6, Section 6.11 is set forth in the Petition for a Writ of Certiorari, 41a.

pealing the ordinance to which the petition referred or submitting the proposal to the electors (*Parr v. Fulton, supra*). The Council determined to submit the proposal to the electors, and scheduled the referendum for August 6, 1968 (Stip. ¶21). By resolution the City Council directed the City Clerk to prepare the voting machines of the city for such election substantially in this manner and form:[4]

FORM OF BALLOT

"RE-ZONING FROM 'A' ONE-FAMILY RESIDENTIAL TO COMMUNITY UNIT PLAN"

"Shall the legislation passed on May 8, 1967 rezoning the 100 and 200 blocks of East Jolly Road (south side of street) from 'A' One-Family Residential District to Community Unit Plan, be adopted?

YES ( ) NO ( )"

The filing of this class action followed. The District Court permanently enjoined the defendant City, its Mayor and its City Clerk from conducting the referendum and ordered them to process the plans for construction of low rent housing on the Jolly-Cedar site, in compliance with local ordinances and regulations, pursuant to the community unit plan previously approved by the City Council[5]. From said Judgment of the District Court, the defendants appealed to the Court of Appeals for the Sixth Circuit which reversed said Judgment and remanded the cause with instructions to dismiss the complaint[6].

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[4] Exhibit 4 to Brief in Support of Defendants' Motion to Dismiss in the District Court.

[5] Petition for a Writ of Certiorari, 26a.

[6] *Idem*, 34a; 47a.

It is true, as Petitioners state on page 8, fn. 8 of their Petition, that the City in the trial court stipulated that paragraph 4(g) of HUD's Low-Rent Housing Manual, Sec. 205.1, was a federal regulation issued pursuant to Title VI of the Civil Rights Act of 1964. After re-examination of the matter upon appeal, the City concluded that said provision was *not* a federal regulation. Because the parties' stipulation does not make the provision *ipso facto* a federal regulation, the City did not consider itself bound since the matter involved a mistake of law. In holding that the HUD Manual "does not arise to the dignity of federal law", the Court of Appeals agreed with the City that the Manual provision in question was not a federal regulation.

Petitioners emphasize that the City Planner of Lansing testified that the purpose of the referendum was to prevent low income families, many of whom would be black, from moving into the Jolly-Cedar neighborhood (Petition, 5 and 6). The matter is not that stark. Asked his *opinion* why the community unit plan at Jolly-Cedar had prompted a referendum, the City Planner replied that the residents in the area surrounding the project were opposed to those of low income being moved there. He did *not* declare that the area residents were opposed on racial grounds. Counsel for the plaintiffs then suggested that many of these people were very likely to be black people, and the witness stated that he assumed that a portion would be Negro (Tr. I, 157).

The City Planner also testified that there was opposition on the part of the area residents to overloading the schools in the district, and to the change of zoning from "A" one-family, to the higher density and to the multiple family housing (*Idem,* 229). He recalled that shortly prior to the present project, the area residents objected to the proposed rezoning of land located 1000 to 1500 feet to the west, from "A" one-family to "D-M" multiple family, to

permit the erection of a private development not involving low income housing. The Planning Board's recommendations were adverse, the City Council concurred, and the property was not rezoned (*Idem,* 227-228).

Further, the City Planner testified that low income housing can be built in an "A" one-family residential district without changing the zoning ordinance (*Idem,* 229-230). Thus, it would be consistent with Lansing's zoning ordinance to build low rent housing in the Jolly-Cedar site without a change to community unit plan. There are currently no plans to build public housing on single family lots there. There is no evidence in the record as to the economic feasibility or unfeasibility of such a project there simply because the matter has not been proposed. The only plan investigated by the city agencies was that which was proposed by the private developer, namely, to erect 100 low rent town-house units and a low rent, 150 unit, five-story apartment building for the elderly.

ARGUMENT

I.

THE ISSUES ARE NOT RIPE FOR ADJUDICATION BY THIS COURT.

From as early as *Hayburn's Case,* 2 Dall. 409, this Court has followed a policy of strict necessity in disposing of constitutional issues. Because constitutional adjudication is the most important and the most delicate of its functions, this Court has developed a series of rules under which it has avoided deciding many of the constitutional questions pressed upon it for decision. One of these rules is "never to anticipate a question of constitutional law in advance of

the strict necessity of deciding it". *Liverpool, New York & Philadelphia S.S. Co. v. Commissioners,* 113 U.S. 33, 39 (1885); *Clay v. Sun Insurance Office,* 363 U.S. 207, 211 (1960). See, also, *Rescue Army v. Municipal Court,* 331 U.S. 549, 568-569 (1947). Here, the referendum on the "spot" zoning ordinance enacted by the City Council of Lansing has not been held. The submitting of the proposal to the electors was permanently enjoined by the District Court. If voted upon, the proposal might carry. Approval would restore vitality to the City Council's ordinance approving the rezoning to community unit plan. At this posture of the case there exists a mere potential impairment of the alleged constitutional rights claimed by the petitioners. If the referendum is permitted to go forward, and the ballot proposal carries, there will be no necessity for this Court to exercise its most important and delicate function in passing upon petitioners' constitutional arguments.

Further, this Court stated in *Rescue Army, supra* at 569, that it would not decide constitutional issues affecting legislation at the instance of one who has availed himself of its benefits. These very petitioners and the class whom they represent have benefited from the use of the city's zoning power which they now challenge. The zoning change was granted, not denied them. By ordinance the Lansing City Council rezoned the parcel of land in question from "A" one-family residential district to community unit plan, thereby permitting the erection of the townhouses and apartment building for those of low income.

Moreover, while the petitioners have emphasized the involvement of the Federal Government in the Jolly-Cedar project, that involvement is of a very limited nature. True, HUD has inspected and approved the site, but that approval is merely tentative. The attention of the Court is respectfully invited to those provisions of plaintiffs' ex-

hibit 1, the HUD Low-Rent Housing Manual, pertaining to the "tentative" site approval, which are printed herein at pages 4b-5b. Those provisions state in part:

> "* * * The term 'tentative approval' means merely that the Regional Office and the Local Authority have agreed on the site to be presented in the Development Program; such tentative approval does not in any way bind HUD to give final approval to the site." (Low-Rent Housing Manual Sec. 205.1, Paragraph 7(b).)[7]

The uncertain future of this development is further underscored by the testimony of the Lansing City Planner who stated that the approval of the zoning does not restrict the developer to building a low-income project; that the builder is not obligated to carry out that program; that he could change his mind, not sell it, but own it himself and rent to anyone he wishes (Tr. I, 231-233). Asked his opinion on cross-examination, the City Planner said that he is not absolutely certain that the developer would proceed with the site (Tr. I, 237).

In an effort to persuade this Court to consider the constitutional issues prior to the actual conduct of the referendum, petitioners rely upon the finding of the District Court that the mere holding of the referendum would serve to deepen the mistrust and increase the violence between the races (Petition, 29; 24a). But the District Court cited no testimony in support of his statement and respondents recall no evidence that supports that conclusion. Petitioners suggest that holding the referendum will subject

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[7] Even the HUD Low-Rent Housing Preconstruction Handbook, RHA 7410.1, Chapter 1, Section 1 (6) (b) provides that approval of the site or sites is a *preliminary* to preparation and approval of a Development Program.

"the people of Lansing to an intense period of racial hostility" (Petition, 29), but fail to cite supporting testimony. Their witness, Dr. Goldner, stated that a simple vote on the issue would not create a race riot, nor did he predict a riot (Tr. I, 205). The Court of Appeals found that no riot was even threatened in this case (Petition, 34a).

The respondents respectfully urge that for the foregoing reasons the issues raised by petitioners are not ripe for adjudication by this Court.

II.

THE SUPREMACY CLAUSE WILL NOT BE VIOLATED WERE THE REFERENDUM PERMITTED TO BE HELD.

This Court has ordained that the inquiry in cases assertedly involving the Supremacy Clause be first directed toward whether there is a valid federal law and, if so, whether there exists a conflict with state law. *Free v. Bland*, 369 U.S. 663, 666 (1962).

In his Opinion the District Court stated that a major factor in the site selection of Jolly-Cedar was compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000 d, and regulations of HUD pursuant to Title VI, particularly 24 C.F.R. § 1.4 (b) and § 205.1 (g) of the HUD Low-Rent Housing Manual (Exhibit 1), which require that sites be selected outside areas of racial concentration[8].

But Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000 d, contains no provision whatever that the sites for federally approved low rent housing be selected outside areas of racial concentration. Nor does 24 C.F.R. §1.4 (b) contain such a provision. "Location * * * of housing"

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[8] Petition, 5a.

without elaboration is simply referred to in that regulation in conjunction with several other factors.

The only place where that provision appears is in paragraph 4 (g) of HUD's Low-Rent Housing Manual, Sec. 205.1. The manual is not a regulation issued by HUD. It is not contained in the Code of Federal Regulations, nor was it shown to have received the approval of the President required by 42 U.S.C. § 2000 d-1 in order to become effective[9].

The very provisions of the HUD Manual upon which petitioners rely demonstrate that HUD does not concur in petitioners' position that contrary local zoning regulations must yield in the face of the HUD site selection policy. These provisions are printed herein at pages 1b-5b. Paragraph 4 (a) (1) of Section 205.1, Low-Rent Housing Manual, page 1b hereof, lists among the criteria for site selection the suitability of the site in relation to the surrounding neighborhood and the *city plan.* Paragraph 4 (c) (1) (page 2b hereof) mandates that the site shall be chosen with due regard for and consistency with *long-range city plans.* Paragraph 4 (c) (2), page 2b hereof, provides that the site shall be located where *zoning laws* protect its residential character, or agreements for obtaining such protection through *amendment* of existing requirements must be made in advance. And paragraph 4 (c) (4), printed at page 2b hereof, states that in addition to appropriate population density, due consideration shall be given to *local regulations* regarding off-street parking. Finally, the current version of the HUD Manual provision in question, printed in the Petition, 38a-40a, shows that HUD will concur in a proposal to locate housing in an

[9] 42 U.S.C. §2000d-1 is set forth in the Petition, 35a-36a.

area of racial concentration because of denial by city officials of necessary rezoning in other areas if justification for such denial of rezoning is demonstrated.

Should the said provision from the HUD Manual be regarded as a "valid federal law," then *Free v. Bland,* 369 U.S. 663, 666 1962) directs that a determination be made as to whether that valid federal law conflicts with state law.

The "State" law here must be Chapter 6, Section 6.11, Charter of the City of Lansing, which relates to initiative and referendum (Petition, 40a). Surely on their face there exists no actual conflict nor clear collision between the HUD Manual provision and the City Charter provision. They relate to entirely different matters. The referendum provision of the Charter is *not* limited to zoning ordinances but applies to any ordinance adopted by the City Council. Nor does the language of the proposal on the ballot, as set forth herein on page 6, actually conflict or clearly collide with the HUD Manual provision. This Court has enjoined "* * * seeking out conflicts between state and federal regulation where none clearly exists." *Seagram & Sons v. Hostetter,* 384 U.S. 35, 45 (1966).

Even if the referendum were conducted and the rezoning granted by the City Council were rejected by the voters, thus restoring the Jolly-Cedar area to "A" one-family residential, low income housing could still be constructed in that area. The City Planner so testified (Tr. I, 229-230). Thus, the HUD policy of selecting sites outside of areas of racial concentration would be fulfilled.

Finally, as will be discussed later herein, the referendum was not discriminatory but was founded on neutral principles. *Hunter v. Erickson,* 393 U.S. 385, 393-395 (concurring opinion) (1969). *Spaulding v. Blair,* 403 F. 2d 862, 865 (4th Cir. 1968).

Respondents respectfully submit that the Court of Appeals was correct in deciding that the HUD Manual does not rise to the dignity of federal law and, even it it did, that the City Charter providing for initiative and referendum does not conflict with it.

III.

THE COURT OF APPEALS APPLIED THE FOURTEENTH AMENDMENT CONSISTENTLY WITH THE DECISIONS OF THIS COURT.

Petitioners assert that the "Due Process and Equal Protection Clauses of the Fourteenth Amendment require that the City of Lansing grant the zoning change necessary to build low rent housing at Jolly-Cedar" (Petition, 17). While respondents deny that such is an accurate statement of the law, they point out that the City has already granted the necessary zoning change.

It is clear that petitioners have not shown that the Court of Appeals has "decided a federal question in a way in conflict with applicable decisions of this Court" (Rule 19 (1) (b) of the Supreme Court). They are therefore relegated to attempting to show that the Court of Appeals failed to apply the Due Process and Equal Protection Clauses in accordance with *principles* established by this Court. In this, respondents submit, they have failed also.

A. Due Process.

Under this portion of their argument, petitioners cite only two decisions of this Court, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), for the proposition that zoning regulations are an exercise of the police power, and *Nectow v. City of Cambridge*, 277 U.S. 183 (1928), for the

principle that zoning regulations must have a substantial relation to the public health, safety, morals, or general welfare.

These principles are scarcely in dispute here. Zoning regulations, as other laws, are presumed to be constitutional. Petitioners made no challenge to the constitutionality of the original zoning of the Jolly-Cedar area as "A" one-family residential. They made no showing that the City was maintaining low densities simply as an exclusionary device. The fact of the matter is that the City granted the rezoning sought by petitioners. In scheduling the matter for referendum, the City was simply following the City Charter. Petitioners confuse the sufficiency of the reasons advanced by the neighboring property owners who opposed the rezoning with the justification for zoning Jolly-Cedar as "A" one-family residential at the time when Lansing first adopted its zoning ordinance.

B. Equal Protection.

Under this portion of their argument petitioners cite four decisions of this Court: *Burton v. Wilmington Parking Authority,* 365 U.S. 715 (1961), for the statement that "it is of no consolation to an individual denied the equal protection of the laws that it was done in good faith"; and *Douglas v. California,* 372 U.S. 353 (1963); *Harper v. Virginia State Board of Elections,* 383 U.S. 663 (1966); and *Shapiro v. Thompson,* 394 U.S. 618 (1969), for the proposition that discrimination against the poor also violates the Fourteenth Amendment.

These cases are of no assistance to petitioners in their quest to show that the Court of Appeals failed to apply the Equal Protection Clause in accordance with principles established by this Court. Surely the citation of *Burton* does

not accomplish this, and *Douglas, Harper and Shapiro* were clear instances of discrimination against the poor by States pursuant to state law. Here, the City Planner's testimony relied upon by the petitioners was characterized by him as being his "personal opinion" (Tr. I, 239-240). He testified that private individual residents of the area, *not* city officials, were desirous of keeping the poor from their neighborhood. None of the parties who signed the referendum petitions was called to testify as a witness at the trial.

Petitioners argue that the District Court's finding that racial discrimination was the motivation behind the referendum is not an essestial element of their equal protection claim (Petition, 20). Respondents disagree. The prohibition of the Equal Protection Clause goes no further than the invidious discrimination. *Morey v. Doud,* 354 U.S. 457, 463 (1957); *Williamson v. Lee Optical Co.,* 348 U.S. 483, 489 (1955). Invidious discrimination must be a central ingredient of petitioners' equal protection argument. Further, petitioners complain that the Court of Appeals was acting inappropriately when it set aside the finding of discrimination made by the District Court. Such is hardly the case. In carefully reviewing the evidence on this issue, the Court of Appeals was acting pursuant to Rule 52(a), Federal Rules of Civil Procedure (Petition, 31a-33a).

Finally, petitioners urge that Lansing's City Planner "acknowledges that zoning is part of a sophisticated system of government which locks blacks and Mexican-Americans into Lansing's ghetto" (Petition, 16-17). But it is clear from the transcript that the zoning referred to by the witness is that practiced in the communities surrounding and outside of the City of Lansing and not the zoning employed within the City of Lansing (Tr. I, 141-143).

C. The Court of Appeals Properly Held That the City Was Not a Partner in Discrimination.

Respondents respectfully urge that the Court of Appeals properly held that the City was not a partner in discrimination. In so ruling, the Court distinglished *Reitman v. Mulkey,* 387 U.S. 369 (1967), upon which the District Court had relied. In *Reitman,* the California Supreme Court had concluded that a section of the State Constitution authorized private discrimination and made the state "at least a partner in the instant act of discrimination". This Court *affirmed,* observing that it was dealing with a provision which did not just repeal an existing law forbidding private racial discriminations, but rather one which authorized racial discrimination in the housing market, and made the right to discriminate one of the basic policies of the State.

The language of the ballot proposal that was to be voted upon by the electors of Lansing was unobjectional on racial grounds. It was by far more neutral than a proposal to repeal an existing open housing statute or ordinance. The attention of the Court is re-invited to the language of the ballot proposal printed at page 6 herein. This proposal does not overturn existing laws restricting the right of private sellers and lessees to discriminate. It doesn't change the situation from one where discriminatory practices were restricted to one where they are encouraged. The City is simply following the Charter in holding the referendum. It is doing so only after two State Courts have ordered the respondent City Clerk to accept the referendum petition and to present it to the City Council for its action thereon. Rejection of the proposal at the polls does not authorize racial discrimination in the Lansing housing market.

Unlike the situation in *Hunter v. Erickson,* 393 U.S. 385 (1969), the situation in Lansing does not involve repeal of an existing fair housing ordinance. Unlike *Hunter,* there is no proposed or existing legislation which would invidiously discriminate.

Approximately one month after its decision in *Hunter,* this Court *denied* certiorari in *Holland v. Lucas County Board of Elections,* 393 U.S. 1080 (1969). The *United States Law Week* described the question presented as:

> "Does city-wide referendum that nullified existing city fair housing ordinance, and which has effect under city charter provisions of requiring approval of majority of electorate before future fair housing ordinance may be enacted, deprive Negroes of equal protection of laws in violation of Fourteenth Amendment?" (37 U.S.L. Week 3012).

As part of their introduction to "Reasons for Granting the Writ", petitioners state:

> "* * * A significant reason why such [low income] housing is unavailable is that *local governments often misuse their power to zone* and frustrate the implementation of federal programs designed to provide housing in non-ghetto areas. *The importance of this case is that it provides an opportunity to assure that public controls over the development of land assist and not deter these important federal efforts*" (Petition, 14). [Emphasis supplied.]

In the estimation of the respondents, this case of *Ranjel v. City of Lansing* is a most inappropriate vehicle for such a proposition. Far from impeding these important federal efforts, the City of Lansing has championed the rights of these minorities. The attention of this Court is respectfully invited to the fact that with the approval of the

Lansing City Council, the Lansing Housing Commission applied to HUD for program reservations to build 1,000 units of low rent public housing; that acting through the Lansing Housing Commission, the City and HUD advanced funds for selecting low rent housing sites and planning low rent housing projects, and that it was the City Council itself which approved the rezoning in the Jolly-Cedar area from "A" one-family residential to community unit plan. It was the respondent City Clerk who refused to accept the referendum petition. It was the respondent City of Lansing which resisted the mandamus action in the State Circuit Court, which sought to compel the City Clerk to certify the referendum petition as sufficient and to present the said petition to the City Council for its action. It was the City of Lansing which appealed to the Michigan Court of Appeals from the judgment granting mandamus. Upon affirmance of the judgment by the Court of Appeals, the Lansing City Council had the authority and opportunity —if it wished—to put an end to the matter. Under Chapter 6, Section 6.11 of the City Charter, the Council had the alternative of either repealing the ordinance which provided for the rezoning, or submitting the proposal to the electors. The Lansing City Council determined not to repeal the ordinance, and scheduled the referendum.

IV.

THE COURT OF APPEALS CORRECTLY HELD THAT THE DISTRICT COURT COMMITTED ERROR IN ENJOINING THE CONDUCTION OF THE REFERENDUM WHERE NO CIVIL UNREST WAS THREATENED AND WHERE THE BALLOT PROPOSAL WAS NEUTRAL.

The real issue here does not involve Lansing's zoning power, as petitioners assert (Petition, 27), for that power has been exercised already by the City Council in favor of Petitioners. The rezoning that was sought has been granted. The District Court did not hold the City's zoning ordinance unconstitutional. Rather, it was the conducting of the referendum which he enjoined (Petition, 26a), and it was that judgment from which the respondents appealed.

Respondents disagree that any "legitimate state interest" or "compelling governmental interest" need be demonstrated here. This Court in *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969), relied upon by petitioners, stated that any classification which serves to penalize the exercise of a constitutional right is unconstitutional, unless shown to be necessary to promote a compelling governmental interest. In *Shapiro*, the constitutional right in question was the right to move freely from State to State. Here, there is no classification. The District Court expressly declined to hold that petitioners have a constitutional right to low cost housing (Petition, 23a), and petitioners surely have not established that they have such.

The real issue in this case is the threat presented by petitioners to the vitality of the referendum system, that safeguard which is so deeply rooted in American history. Statutes and ordinances providing for referendum are grounded upon general democratic principle. *Hunter v.*

Erickson, 393 U.S. 385, 393-394 (1969) (concurring opinion).

The ballot proposal in this case, page 6 herein, is certainly neutral. Under the Lansing City Charter, referendum is available to the people to review *any* ordinance, whether in the field of zoning or otherwise, enacted by the Council (Charter, Chapter 6, Section 6.9; Petition, 40a). Mention has been made earlier of the lack of any threat of a riot occasioned by the scheduling of the referendum (pages 10-11 hereof).

The respondents respectfully submit that the Court of Appeals was clearly correct in holding that the District Court committed error in enjoining the conduction of the referendum.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

PLAINTIFFS' EXHIBIT 1 ("Regulation" Involved)
HHFA
PHA
September 1965 205.1

LOW-RENT HOUSING MANUAL[1a]

Site Selection and Tentative Site Approval

1. *General.* This Section sets forth the criteria to be used in judging the suitability of proposed sites for low-rent housing and the procedure for obtaining tentative PHA approval of proposed sites. Special cases are outlined, involving urban renewal sites and the use of existing buildings.

* * *

4. *Criteria for Site Selection*

   a. *General.* The considerations involved in site selection include:

      (1) The suitability of the site in relation to the surrounding neighborhood and the city plan.[2a]

* * *

[1a] The United States Department of Housing and Urban Development Low-Rent Housing Manual has recently been reorganized. The pertinent provisions of the Manual have been carried over in substance to HUD's Low-Rent Housing Preconstruction Handbook, RHA 7410.1, Chapter 1, Section 1.

[2a] This provision is now found in the HUD Low-Rent Housing Preconstruction Handbook, RHA 7410.1, Chapter 1, Section 1 (2) (a) (1).

c. *Suitability in Relation to Surrounding Neighborhood and City Plan*

(1) The site shall be chosen with due regard for and consistency with local plans for long-range city plans and related development and slum clearance and urban renewal proposals which would control or influence the site location.[3a]

(2) The site shall be located where zoning laws protect its residential character, or agreements for obtaining such protection through amendment of existing requirements must be made in advance. This requirement shall not be construed as prohibiting the location of a project in the general proximity of business, manufacturing, or industry, but is intended to ensure that the project and its immediate environment are reasonably free from danger of adverse effect by nonresidential land use.[4a]

* * *

(4) In addition to appropriate population density, due consideration shall be given to local regulations regarding off-street parking. * * *[5a]

* * *

[3a] The substance of this provision is now found in the HUD Low-Rent Housing Preconstruction Handbook, RHA 7410.1, Chapter 1, Section 1 (2) (b) (1).

[4a] The substance of this provision is now found in the HUD Low-Rent Housing Preconstruction Handbook, RHA 7410.1, Chapter 1, Section 1 (2) (b) (2).

[5a] The substance of the portion of this provision set forth above is now found in said Handbook, RHA 7410.1, Chapter 1, Section 1 (2) (b) (5).

g. *Nondiscrimination in Housing.* Section 1.4(b) (2) of the regulations of the Housing and Home Finance Agency issued under Title VI of the Civil Rights Act of 1964 provides in pertinent part that:

> "A recipient [Local Authority], in determining the location or types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided * * * may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect persons of a particular race, color, or national origin."

The housing on the site to be selected must be operated in accordance with all applicable requirements of Title VI of the Civil Rights Act of 1964 and of Executive Order 11063, and Department regulations and requirements issued pursuant thereto. The aim of a Local Authority in carrying out its responsibility for site selection should be to select from among sites which are acceptable under the other criteria of this Section those which will afford the greatest opportunity for inclusion of eligible applicants of all groups regardless of race, color, creed, or national origin, thereby affording members of minority groups an opportunity to locate outside of areas of concentration of their own minority group. Any proposal to locate housing only in areas of racial concentration will be prima facie unacceptable and will be returned to the Local Authority for further consideration and submission of either (1) al-

ternative or additional sites in other areas so as to provide more balanced distribution of the proposed housing or (2) a clear showing, factually substantiated, that no acceptable sites are available outside the areas of racial concentration. Such submissions by Local Authorities may be made to the Project Planner and Land Adviser for inclusion in their report. (See paragraph 7b below.) The advice and assistance of the Regional Office are available to Local Authorities in respect to the selection of sites under the special conditions and considerations pertaining to any particular case.[6a]

7. *Procedure for Site Selection and Tentative Approval*

a. *Selection by Local Authority and Inspection by Regional Office.* Having reached its conclusions as to a suitable site, the Local Authority shall request the Regional Office to send appropriate personnel to inspect the proposed site and to consider all of the reasons advanced for the Local Authority's selection.[7a]

b. *Tentative Site Approval.* After inspecting the proposed site, the Project Planner and the Land Adviser will prepare a report which will be submitted to the Assistant Regional Administrator for Housing Assistance. The Local Authority shall furnish to the Project Planner and the Land Adviser, for inclusion in their report, such material as may be

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[6a] This provision is now found in said Handbook, RHA 7410.1, Chapter 1, Section 1 (2) (g), which contains additional material as set forth in the Appendix to the Petition for a Writ of Certiorari, 39a-40a.

[7a] This provision is now found in said Handbook, RHA 7410.1, Chapter 1, Section 1 (6) (a).

required to support their conclusions, including such supporting data or information as may be required to enable the Regional Office to include, in its tentative approval of the site selected by the Local Authority, a specific determination that the selection is in accordance with HUD policy established under Title VI of the Civil Rights Act of 1964 (see Exhibit 2, Low-Rent Housing Manual Section 102.1). If the report is favorable and if the Assistant Regional Administrator agrees with the recommendations contained in the report, he will, by letter, give tentative approval of the site, whereupon the Local Authority may proceed with completion of the Development Program (see Section 206.3) based upon use of the site proposed. The term "tentative approval" means merely that the Regional Office and the Local Authority have agreed on the site to be presented in the Development Program; such tentative approval does not in any way bind HUD to give final approval to the site.